

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE §
MICHAEL P. ENMON, §
DEBTOR. §

**CASE NO. 17-42244
CHAPTER 11**

**MUTUAL OF OMAHA BANK'S OBJECTION TO
PROSPECT CAPITAL CORPORATION'S MOTION TO DISMISS
CASE PURSUANT TO 11 U.S.C. §1112(b)**

[Relates to Docket No. 45]

COMES NOW, Mutual of Omaha Bank, Creditor in the above reference bankruptcy (“MOB” or “Creditor”) files this objection (“Objection”) to *Prospect Capital Corporation’s Motion to Dismiss Case Pursuant to 11 U.S.C. §1112(b)* (Doc. No. 45) (“Motion to Dismiss”).

I. FACTUAL BACKGROUND

1. On January 10, 2018 (the “Petition Date”), Michael P. Enmon (“Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. The Debtor alleges he owns a business called Kickapoo Kennels, LLC which has not filed Chapter 11. There is a question as to what the Debtor owns and what is owned by The Enmon Irrevocable Family Trust or Kickapoo Kennels LLC.

3. MOB and the non-debtors, The Enmon Irrevocable Family Trust and Kickapoo Kennels, LLC, are the parties to a SBA Loan Agreement for the principle amount of \$1,980,500. As part of security for the loan, MOB has an Absolute Assignment of Leases and Rents and a Deed of Trust against the real estate identified on the Debtor’s Schedule A as a 39 Acre Tract of land located at 23230 Kickapoo Road, Waller, TX 77484.

4. The Debtor acknowledges that around \$1,600,000 is owed on the MOB loans.
5. As of the Petition Date, the debt owed to MOB and Small Business Administration totaled approximately \$1,601,298.04.
6. HCAD shows three accounts for property located on Kickapoo Road, Waller Texas:

Account Number	Owner Name	Property Address	Market Value	Appraised Value
0402120000153	ENMON FAMILY IRREVOCABLE TR	23230 KICKAPOO RD	\$221,225	\$1,806
0402120000157	ENMON FAMILY IRREVOCABLE TR	0 KICKAPOO RD	\$175,902	\$1,869
0402120000132	ENMON FAMILY IRREVOCABLE TR	23230 KICKAPOO RD	\$1,168,769	\$1,168,769
		TOTAL		\$1,564,896

7. The HCAD values show a value lower than the amount owed on the loans.
8. The Debtor is a guarantor on the MOB debt, but MOB is not listed as a top 20 creditor in the Schedules. *See, Exhibit A.*
9. Prospect filed the Motion to Dismiss and a Stay Relief Motion on the same date and set them for March 8, 2018 (Doc. No. 45 and 46). MOB filed an objection to the Stay Relief Motion and incorporates the arguments set forth in its objection herein. *See, Doc. No. 68.*
10. MOB objects to the Motion to Dismiss even if the Debtor's Schedules included assets which are arguably the property of the non-filing entities and the Court agrees the assets should not be administered as part of the Debtor's Estate that does not support dismissal of the case. Arguably, such arguments support evidentiary hearings over which assets are or are not deemed property of the estate. Such hearing could be taken up in the course of a confirmation hearing.

11. While the currently proposed plan may need modifications, it cannot be said at this stage in the case that the Debtor cannot propose a confirmable plan even given the arguments asserted by Prospect.

12. The Motion to Dismiss does not provide any itemization, values or review of which assets it believes are not transferred back to the Debtor's estate given Judge Hoyt's ruling and which assets it believes remain in the entities.

13. As such, dismissal will needlessly duplicate litigation over the ownership of the assets with no value arguably to the Debtor or any creditors but in fact would create undue and unnecessary litigation which only benefits the Debtor's counsel and Creditor's counsel.

II. ARGUMENTS & AUTHORITIES

14. Prospect has failed to establish cause under 1112(b)(4).

15. Given the contested litigation and prior rulings of the District Court regarding transfers between the entities and Enmon, there is a lack of factual support at this time to support dismissal for alleged bad faith.

16. It is premature to dismiss the case.

17. Bankruptcy provides for transparency which will be lost if the case is dismissed.

18. MOB requests that the Motion to Dismiss be denied without prejudice.

19. MOB reserves all rights to assert any all applicable arguments at the hearing on the Motion to Dismiss.

III. ADMISSIONS & DENIALS

20. As to the allegations of Paragraph 1, MOB lacks sufficient information to admit or deny and in abundance of caution the allegations are denied.

21. The allegations of Paragraph 2 are legal conclusions and/or legal argument and, therefore, no admissions or denials are necessary. In an abundance of caution, the allegations are denied.

22. As to the allegations of Paragraph 3 - 37, MOB lacks sufficient information to admit or deny except to the extent that MOB acknowledges that debt payments were received and to the extent that the documents, to the extent true and correct copies, are the best evidence of anything contained in such document. Out of an abundance of caution, all other allegations are denied.

23. The allegations of Paragraph 38 - 62 are legal conclusions and/or legal argument and, therefore, no admissions or denials are necessary; however, in an abundance of caution, are denied.

IV. JURISDICTION AND VENUE

24. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and/or (O).

25. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

REQUESTED RELIEF

Mutual of Omaha Bank respectfully requests that the Court deny Prospect Capital Corporation's Motion to Dismiss, and award such other and further relief as is just, including the award of fees and costs to Mutual of Omaha Bank.

DATED: March 2, 2018

Respectfully submitted,

HOOVER SLOVACEK LLP

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**ATTORNEY FOR MUTUAL OF
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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2018, a true and correct copy of the foregoing *Creditor Mutual of Omaha Bank's Objection to Prospect Capital Corporation's Motion to Dismiss Case Pursuant to 11 U.S.C. §1112(b)* was served by the Court's ECF notification system to the parties listed below at the email addresses listed below.

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